

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JOSHUA STEAD,)	
Plaintiff,)	
)	No. 2:19-cv-231
-v-)	
)	Honorable Paul L. Maloney
ZACHERY DROGOWSKI, <i>et al.</i> ,)	
Defendants.)	
_____)	

ORDER GRANTING MOTIONS TO DISMISS

Defendants collectively filed two motions to dismiss. Defendants Drogowski, Rogers and the Michigan State Police filed one motion to dismiss. (ECF No. 11.) Defendants Wiater and Chippewa County filed the other motion to dismiss. (ECF No. 14.) The Court held a hearing on the motions and rendered a decision in favor of Defendants.

Consistent with the discussion at the hearing, Defendants' motions to dismiss (ECF Nos. 11 and 14) are **GRANTED. IT IS ORDERED THAT**

1. All claims against Defendant Rogers are dismissed with prejudice. The complaint failed to plead any facts giving rise to a claim against Rogers and Plaintiff waived any claim against Rogers by not responding to that portion of the motion;
2. All claims against the Michigan State Police are dismissed with prejudice. MSP is entitled to sovereign immunity and Plaintiff waived any claim against MSP by not responding to that portion of the motion;

3. Plaintiff's assault and battery charge against Defendant Drogowski is dismissed with prejudice. The statute of limitations for the claim expired and Plaintiff waived the claim against Drowgowski by not responding to that portion of the motion;

4. Plaintiff's excessive force claim against Defendant Wiater is dismissed with prejudice. Plaintiff did not plead any facts to support an excessive force claim against Wiater and Plaintiff waived the claim against Wiater by not responding to that portion of the motion;

5. Plaintiff's excessive force claim against Defendant Drogowski is dismissed with prejudice. Plaintiff did not plead facts to show that the justification for the initial use of lethal force ended such that the Drogowski should have stopped shooting. *See Plumhoff v. Rickard*, 572 U.S. 765 (2014); *Margeson v. White Cty.*, 579 F. App'x 466 (6th Cir. 2014). And, the dashboard video of the shooting establishes that any attempt to amend the complaint for the purpose of pleading facts for an excessive force claim would be futile;

6. Plaintiff's deliberate indifference / state-created danger claim against Defendants Drogowski and Wiater is dismissed with prejudice. Plaintiff did not plead any affirmative act by the defendant officers that created or increased the risk of danger to plaintiff from third parties. Any danger to Plaintiff before he arrived at his parent's house was the same danger he faced when he drove to the church parking lot and then again when he drove away from the church;

7. Plaintiff's claim against Defendant Chippewa County is dismissed with prejudice. Because Plaintiff has not established a violation of his constitutional rights by Defendant Wiater, Plaintiff cannot establish a constitutional violation by Wiater's employer, Chippewa County.

Date: May 29, 2020

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge